

STATE OF MICHIGAN
COURT OF APPEALS

ANN L. MASON,

Plaintiff-Appellant,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellee.

UNPUBLISHED

March 7, 2000

No. 212549

WCAC

LC No. 94-000431

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Plaintiff was found entitled to a closed award of worker's compensation benefits from February 19, 1992 through April 23, 1992, based on her physical injuries, but was denied benefits on her mental disability claim. Plaintiff appealed the denial of her mental disability claim to the Worker's Compensation Appellate Commission (WCAC), arguing that the magistrate applied the wrong legal framework in evaluating her claim. The WCAC affirmed, holding that substantial evidence supported the magistrate's finding that plaintiff was not mentally disabled. Plaintiff's application for leave to appeal to this Court was denied. Plaintiff applied for leave to appeal to the Supreme Court. In lieu of granting leave, the Supreme Court remanded to this Court for consideration as on leave granted. 457 Mich 888 (1998). We affirm.

I

Plaintiff filed an application for hearing on March 10, 1992, alleging that she was disabled from her teaching position due to a cracked rib and a psychological disability. Hearings were conducted before the magistrate on March 24, 1994 and April 7, 1994. Plaintiff testified that she began teaching for defendant in September 1967 after teaching in Flat Rock for three years. She was initially assigned to Kusciusko Elementary School, teaching students in first through seventh grades. The students and faculty at Kusciusko were mostly Caucasian, but that eventually changed through the advent of busing. When enrollment declined, plaintiff was transferred to Carver Elementary School in 1980, where she taught science and math to students of varied ethnic backgrounds, without incident.

Plaintiff was transferred to Lessenger Middle School at the end of the 1984 school year, where she taught science to sixth and seventh graders. The student body at Lessenger was predominantly African-American, and plaintiff was the only white female on staff for some time. Plaintiff testified that the school atmosphere was chaotic, and rules of conduct were selectively enforced. Plaintiff testified that she was placed under stress when she was given inadequate time to complete projects and inadequate supplies. Around March 23, 1990, plaintiff had a conference with Principal Jean Nash, at which Nash discussed allegations that plaintiff had been abusive, rude, and short with students and parents. Plaintiff denied the allegations, and stated that she felt uncomfortable and unwanted since she began teaching at Lessenger.

On February 18, 1992, two of plaintiff's students were involved in an altercation in the classroom. Plaintiff tried to intervene, but when she grabbed hold of one of the students, she fell over some desks, striking her head. She lost consciousness and was taken to the hospital. She was released that day, but did not return to work due to chest pain and headache. Plaintiff was subsequently diagnosed by her personal physician with a fractured rib and was referred to a psychiatrist for resulting emotional problems.

Plaintiff returned to work on November 30, 1992, at which time she was transferred to Hampton Elementary School at her request. Plaintiff continued working until December 1993, when she went on medical leave due to a nonwork-related knee injury. She was receiving sickness and accident benefits at the time of the hearings before the magistrate. Plaintiff applied for retirement effective July 1, 1994, explaining that she had "lost the zest for teaching," in part because of the stress caused by the incident at Lessenger.

Dr. David Franzblau, plaintiff's treating psychiatrist, testified that he examined and treated plaintiff with respect to her depression and anxiety after the February 18, 1992 incident. He diagnosed plaintiff as having post-traumatic stress syndrome as a result of pressure she felt at work and from the student altercation.

Dr. Robert Farra, a clinical psychologist, also testified that he diagnosed plaintiff with post-traumatic stress disorder as a result of the combined effect of the environment in the Detroit Public School System and the February 1992 student altercation. Dr. Farra opined that plaintiff was disabled due to post-traumatic stress disorder, despite the fact that she had returned to work on a regular basis until December 1993, when she injured her knee. However, both Dr. Farra and Dr. Franzblau admitted that post-traumatic stress syndrome was more likely to occur as the result of more severe stressors than the ones involved in this case.

Dr. Raymond Mercier, defendant's expert psychiatrist, testified that he did not believe plaintiff suffered from post-traumatic stress syndrome because the stressors she experienced were not normally associated with this disorder. He did not believe that plaintiff displayed any of the symptoms of that disorder, and he concluded that plaintiff was not disabled by her condition. Rather, Dr. Mercier opined that plaintiff was simply "disinterest[ed] and disinclin[ed] to return to her customary work as a teacher."

Clinical psychologist Manfred Greiffenstein testified that, after performing multiple tests on plaintiff, he found that she might have a mild case of post-traumatic stress syndrome, but that the symptomatology was not objectively manifested in the tests performed on her. Greiffenstein further concluded that plaintiff's condition was not debilitating.

Dr. Gerald Robbins, a neurologist, performed various tests on plaintiff related to a possible closed head injury. All of the tests were within normal limits, and he found no indications that plaintiff suffered a disabling injury.

In a May 4, 1994 decision, the magistrate found that plaintiff was entitled to a closed award of benefits for her physical injury. He found that plaintiff was physically disabled from employment from February 19 through April 23, 1992 by her broken rib, but that she was not subject to concerted acts of harassment from the administration, nor was she the subject of specific racially motivated confrontations. The magistrate concluded that while plaintiff may have suffered some mild form of post-traumatic stress disorder, the condition was not to a disabling state.

Plaintiff appealed to the WCAC, arguing that the magistrate failed to apply the principles enunciated in the Supreme Court's ruling in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994), which clarified the test for mental disabilities. In particular, plaintiff argued that the magistrate improperly interpreted the events which plaintiff claimed caused her mental disability, incorrectly concluding that ordinary events at work cannot be the sort of events which can trigger or cause a compensable mental disability under *Gardner*. The WCAC affirmed the magistrate's decision, finding it unnecessary to "get into a detailed discussion concerning whether the magistrate properly applied the *Gardner* principles concerning actual events, unfounded perceptions and significant contribution," because the magistrate found as fact that plaintiff did not suffer from a mental disability, and this finding was supported by competent, material and substantial evidence.

II

Worker's compensation magistrates determine the facts pertaining to a worker's compensation claim. MCL 418.847; MSA 17.237(847). The magistrate's findings are conclusive if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). On judicial review, this Court will inquire whether the WCAC acted in a manner consistent with the concept of administrative appellate review. *Goff v Bil-Mar Foods (After Remand)*, 454 Mich 507, 516-517, 528; 563 NW2d 214 (1997); *Holden v Ford Motor Co*, 439 Mich 257, 267-269; 484 NW2d 227 (1992). This Court's review does not include an independent review of the magistrate's decision or a substantial review of the evidence. *Holden, supra* at 279, n 38. A decision of the WCAC is subject to reversal only if the WCAC operated within the wrong legal framework, or if the decision was based on erroneous legal reasoning. *Id.*; *O'Connor v Binney Auto Parts*, 203 Mich App 522, 527; 513 NW2d 818 (1994).

MCL 418.301(2); MSA 17.237(301)(2) provides:

Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.

To establish a compensable mental disability claim under this provision, a claimant must prove: (1) a mental disability; (2) arising out of the actual events of employment, not unfounded perceptions thereof; and that (3) those events contributed to, aggravated, or accelerated the mental disability in a significant manner. *Gardner, supra* at 27-28, 52.

Plaintiff argues that the WCAC erred in affirming the magistrate's decision because its causal analysis was flawed under *Gardner*, and its finding of no mental disability was "completely interconnected" with the faulty causation analysis. Plaintiff claims that the magistrate "found no *disability* based upon his finding of insufficient *causation*" and that it is impossible to separate the two issues in the magistrate's opinion.

After reviewing the magistrate's opinion, we do not agree with plaintiff's contention that the magistrate's finding of no mental disability is dependent upon the magistrate's causation analysis. The magistrate's references to causation in his opinion are nothing more than reports of expert opinions regarding post-traumatic stress disorder. Defendant's experts, Dr. Mercier and Dr. Greiffenstein, both of whom the magistrate expressly found more persuasive than plaintiff's treating physician, opined that the condition called post-traumatic stress disorder is caused by very stressful events, such as war or disaster, and not by the sorts of incidents relied upon by plaintiff. Moreover, even though Dr. Greiffenstein was willing to believe that plaintiff suffered a mild form of the disorder, both Dr. Greiffenstein and Dr. Mercier concluded that plaintiff was not mentally disabled at the time of their examination. Their medical testimony, which necessarily considered the nature and severity of the events plaintiff claimed to have resulted in post-traumatic stress disorder, was relevant to determine whether plaintiff suffered from a mental disability.

The magistrate in a worker's compensation case is ordinarily free to accept the medical testimony he or she finds most persuasive. *Miklik v Michigan Special Machine Co*, 415 Mich 364, 367; 329 NW2d 713 (1982). The WCAC will not reverse a magistrate for choosing between two reasonable but differing views. Because we see no reason, and plaintiff offers none, for finding the magistrate's choice of experts to be unreasonable, we agree with the WCAC that the magistrate's finding of no disability is supported by substantial evidence on the whole record. *Holden, supra* at 267. See *Great Lakes Steel Division of National Steel Corp v MPSC*, 130 Mich App 470, 481; 344 NW2d 321 (1983).

In view of our decision that the magistrate correctly found that plaintiff did not suffer a compensable mental disability, we agree with the WCAC that whether the magistrate erred in its causation analysis is irrelevant. Application of the *Gardner* principles regarding causation is only appropriate if a mental disability is found in the first instance. *Gardner, supra* at 28.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh